



NTEP Reform

The NIST Perspective on NTEP Reform

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1

Slide 1 of 21



NTEP Reform

NTEP Works!

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2

Slide 2 of 21



NTEP Reform

- This fact is not changed by the existing flaws in the NTEP administrative procedures that we will be talking about today.
- This fact will not be changed by our remedies to those flaws.

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3

Slide 3 of 21



Three Goals for NTEP Reform

- NIST has three goals for NTEP reform:
 - Define appropriate roles for all parties, based upon mutual respect for one another.
 - Correct flaws in Publication 14.
 - Address “production meets type” testing.
- These are worthy objectives. We look forward to working with you to accomplish them.

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4

Slide 4 of 21



Mutual Respect for Participants

- NTEP must operate in a manner that respects the integrity and sovereignty of its partners:
 - State and Local governments, and
 - The United States Government.
- NTEP must meet the needs of the businesses it serves.

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5

Slide 5 of 21



Mutual Respect for Participants

- Protect business by assuring that no one believes that the Federal government, or state and local governments, are imposing unlawful *de facto* taxes.
- Protect the Powers of State and Local Governments to regulate weights and measures; avoid their preemption by NIST, an agency of the Federal government.

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6

Slide 6 of 21



Mutual Respect for Participants

- Protect NIST, an agency of the United States, by assuring that the actions of organizations or individuals, acting on their own behalf or under color of state law, do not overturn the lawful actions of the United States.

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7

Slide 7 of 21



Flaws in Publication 14

- Inappropriate division of roles and responsibilities in establishing operating procedures.
- Inappropriate appeals process that permits a private entity to overturn the actions of the United States government.
- Inappropriate imposition of user fees.

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8

Slide 8 of 21



Flaws in Publication 14

- NIST has met with the NCWM, Inc., leadership to discuss these matters and has provided them with revisions to Publication 14 intended to overcome these problems.
- Copies of the revisions are available to you.
- Until NCWM, Inc. and NIST reach a conclusion on these matters, NIST is operating as if these changes are in effect.

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9

Slide 9 of 21



Flaws in Publication 14, Roles

- Publication 14, section B seems to permit NCWM, Inc. to determine policies and procedures about the operation of the United States, stating that:
 - “the NCWM, Inc. NTEP Committee is responsible for the operation of this program, including the establishment of policy and procedures and the resolution of policy, technical and appeals issues.”

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10

Slide 10 of 21



Flaws in Publication 14, Roles

- This is an overstatement, given that NCWM, Inc. cannot set policy for NIST.
- NIST proposes to rewrite section B to say:
 - “The NCWM, Inc. NTEP Committee is jointly responsible with the NIST Office of Weights and Measures for the operation of NTEP, and establishes technical standards through the NCWM, Inc. National Type Evaluation Technical Committee.”

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11

Slide 11 of 21



Flaws in Publication 14, Appeals

- The NTEP appeals process as set out in Sections B, N, P and R in Publication 14 provides that the NTEP Committee of NCWM, Inc. has the power to overturn decisions of the United States by revoking NTEP Certificates of Conformance issued by the NIST Chief of the Office of Weights and Measures under the authority of 15 U.S.C. 272(c)(2).

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12

Slide 12 of 21



Flaws in Publication 14, Appeals

- To put it plainly, this doesn't work.
- From the NIST point of view, an appealable event occurs when NIST denies an application for an NTEP certificate, and NIST must decide the appeal. Recourse from NIST decisions is in Federal Court, under the Administrative Procedures Act.

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13

Slide 13 of 21



Flaws in Publication 14, Appeals

- Entirely different is the type of issue that is raised where a third party objects to an existing certificate, alleging that “production does not meet type”.
- NIST does not view challenges to existing certificates based upon alleged nonconformance of production devices to prototype to be an appealable event.

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14

Slide 14 of 21



Flaws in Publication 14, Fees

- User fees present a similar issue.
- Under section N(1) of Publication 14, NCWM, Inc. collects an annual “maintenance fee” for the NTEP Certificates issued by NIST, and enforces its collection through the threat that NCWM, Inc. will render certificates “inactive” if NCWM, Inc. is not paid.

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15

Slide 15 of 21



Flaws in Publication 14, Fees

- Depending on how you look at it, the maintenance fee could be viewed as either:
 - Proper;
 - A usurpation of the authority of the United States by a private body, NCWM, Inc.; or
 - The imposition by the United States of an unlawful de facto tax upon participants in NTEP via the imposition of maintenance fees.

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16

Slide 16 of 21



Flaws in Publication 14, Fees

- NTEP relies upon the maintenance fees to operate.
- We need to find a good basis for the imposition of fees for NTEP that respect the rights of the people who pay them, and the authority of the United States.

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17

Slide 17 of 21



Production Meets Type

- Enforcement of regulations governing weights and measures is a matter of State rather than Federal jurisdiction.
- State and local governments are vigorously working day-in and day-out to ensure that production does meet type for NTEP devices by inspecting weighing devices under authority of state law.

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18

Slide 18 of 21



Production Meets Type

- Production meets type raises questions:
 - What statistical samples, tolerances and acceptable failure rates would be used?
 - Would the program surveil all devices around the country? or respond to complaints from competitors? or respond only when state or local officials find probable cause?
 - Who would pay for these activities? Who would be liable when errors are made?

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19

Slide 19 of 21



Production Meets Type

- NIST will not operate a production meets type program for weighing and measuring devices, because:
 - This a matter of state and local government jurisdiction, not Federal.
 - NIST does not have un-utilized human or funding resources available for this activity.
 - NIST is not a regulatory agency.

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20

Slide 20 of 21



Production Meets Type

- NIST will provide training, workshops, and guidance to assist NCWM, Inc. or others in the process of setting up a conformity assessment program for NTEP devices.
- In short, while NIST will not participate directly in operating a production meets type program, we look forward to working with you to address this problem.

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21

Slide 21 of 21